

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CIVIL REVISION APPLICATION NO. 1 OF 2019

KALYANI W/O ABHAY KULKARNI AND OTHERS
VERSUS
SMT. VASUDHA W/O KESHAV KULKARNI

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Advocate for Applicants : Mr. Natu Sharad V.
Advocate for Respondent-sole : Mr. Kulkarni D.K.

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CORAM : V. K. JADHAV, J.
DATED : 31st JANUARY, 2020

PER COURT:-

1. Heard both sides.
2. It appears that the applicants/original defendants have filed an application Exhibit 21 under Order VII Rule 11(d) of C.P.C. for rejection of plaint. It has been contended that the respondent/plaintiff has instituted the suit bearing Special Civil Suit No. 63 of 2018 for declaration pertaining to the mutation entry, avoidance of sale deed, for recovery of possession of suit property and also for a decree of perpetual injunction. The respondent/plaintiff has valued the suit for the purpose of court fees as per Section 6 (iv)(ha) and Section 6(v)(b) of the Maharashtra Court Fees Act. The respondent/plaintiff however, for

the purpose of jurisdiction of the court, has valued the suit at Rs.9,04,150/-.

3. Learned counsel for the applicants/defendants submits that the suit property is the agricultural land situated at village Vihamandwa, Taluka Paithan and moreover, the parties are also residing within the jurisdiction of the Paithan Court. Learned counsel submits that as per the provisions of the Maharashtra Suits Valuation (Determination of Value of Land for Jurisdictional Purposes) Rules, 1983, the valuation of the land for the purpose of jurisdiction and payment of court fees is the same. Learned counsel submits that the respondent/plaintiff ought to have instituted the suit in the Court of Civil Judge, Junior Division, Paithan.

4. Learned counsel for the applicants, however, concedes that in terms of Section 8 of the Suits Valuation Act, 1887, the court fees value and the jurisdictional value to be the same in certain suits other than those referred in paragraphs (v), (vi) and (x) and clause (d) of paragraph (xi) of Section 6 of the Bombay Court Fees Act, 1959. Learned counsel submits that so far as the suit valuation in respect of avoidance of the sale deed is concerned, that squarely

falls under Section 6 (iv)(ha) of the Maharashtra Court Fees Act. In view of the same, since the suit has been instituted for avoidance of sale, the respondent/plaintiff is liable to pay court fees and value the suit for the purpose of jurisdiction in terms of Section 6(iv)(ha) of the Maharashtra Court Fees Act read with Section 8 of the Suits Valuation Act, 1887. Learned counsel concedes that in such type of suits, the court fees value and the jurisdictional value to be the same. However, learned counsel submits that in a suit for avoidance of sale as contemplated under Section 6(iv)(ha) of the Maharashtra Court Fees Act, the court fees is leviable as per the value of the property as shown in the document and not as per the market value of the property. Learned counsel, in order to substantiate his contention, placed reliance on the case of ***Asha Sopan Maithane vs. Ramkrushna Punjaji Wanare***, reported in **2011 (4) Bom.C.R. 637**. Learned counsel submits that in terms of the ratio laid down by this Court in the aforesaid case, if the valuation of the court fee and the jurisdiction is the same, then, it is apparent that the respondent/plaintiff has overvalued the suit and as such, the plaint is required to be returned to the respondent/plaintiff for presentation before the proper court having jurisdiction to deal with the suit.

5. Learned counsel for the respondent/plaintiff has not disputed this legal position, however, learned counsel submits that the respondent/plaintiff would file an application before the trial court for carrying out amendment pointing out therein that there are two documents in respect of the same property and avoidance of those documents is sought by the respondent/plaintiff in the suit.

6. Section 8 of the Suits Valuation Act, 1887 reads as under:

“8. Court-fee value and jurisdictional value to be the same in certain suits

Where in suits other than those referred to in Paragraphs (v), (vi) and (x) and clause (d) of paragraph (xi) in section 6 of the Bombay Court Fees Act, 1959 court-fees are payable ad volorem under the Bombay Court Fees Act, 1959 the value as determinable for the computation of court-fees and the value for the purposes of jurisdiction shall be the same.”

7. It is clear that in the suits other than those referred in Paragraphs (v), (vi) and (x) and clause (d) of paragraph (xi) in section 6 of the Bombay Court Fees Act, 1959, the court fee value

and the jurisdictional value to be the same in the suits. In view of the same, I do not find any fault in the order of the trial court to that extent and the learned counsel appearing for the applicants/defendants has also conceded the same.

8. In the case of ***Asha Sopan Maithane*** (supra), this Court (Coram : Dharmadhikari B. P., J.) in para 12 and 16 has made the following observations:

12. The provisions of Section 6 which deal with computation of fees payable in certain suits, the words used are "value of property" and "market value". For the present purposes, it needs to be noticed that Section 6(v) prescribes Court fee in suits for possession of land, house and gardens. This clause (v) itself shows that such court fee is payable according to the value of the subject matter. It also stipulates that in case of houses or gardens, its market value is deemed to be value of subject matter and where subject matter is land, a sum equal to 40 times or 80 times the survey assessment, is deemed to be its value. The Scheme, therefore, is apparent and Legislature has specifically used the word market value whenever it wanted to employ that word and wanted the plaintiff to pay court fee on such market value. S.6(iii) can also be referred to for this purpose

and it prescribes court fee on suits for other moveable properties having market value. Its reading shows that court fee is to be paid on its market value that too at the date of presentation of Suit. Hence, the Legislature has given different meaning to word "value" and "market value" and has not used one or the other to imply same thing. In case of agricultural land, the value is deemed to be at either 40 times or 80 times its survey assessment. Hence, language of Section 6(iv)(ha) assumes importance & it does not use the word "market value" but it only uses the word value of the property. It is not in dispute that sale deed dated 25.06.1998 is for Rs.4,60,000/- and accordingly the petitioner - plaintiff valued his suit at Rs.4,60,000/-. He is not party to that sale deed.

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16. *In present matter, as already noticed, the provisions of Section 6 make a difference between market value and value of the property. The provisions of Section 6(v) of the Act specifically state that when suit is for possession of house and garden, market value thereof is the value for the purposes of court fee. Legislature has in Section 6(iv)(ha) not used the word "market value". The one half of ad valorem fee leviable thereunder is on the*

value of the property & obviously the value has to be looked into the subject document. Incorporation of Section 6(v) in Section 6(iv)(d) of Act and not in this Section 6(iv)(ha) is deliberate. If objection of the defendant is to be upheld, such reference to it was essential to attract payment of court fee as per market value if such document or contract relates to a house or garden. Its non incorporation brings forth the distinction envisaged by the legislature in assessment of court fees in suits regulated by Section 6(iv)(d) & Section 6(iv) (ha) of Act. The sale deed in present matter in relation to which declaration is sought by plaintiff is for Rs.4,60,000/-. It is, therefore, apparent that he is seeking declaration in relation to a document which is valued at Rs.4,60,000/-. The valuation as undertaken in plaint for said purpose of Section 6(iv) (ha), therefore, is not erroneous.”

9. In view of the above observations in the case of **Asha Sopan Maithane** (supra), if the value of the property as stated in the documents is considered, then it appears that the respondent/plaintiff has overvalued the suit. Consequently, the order passed by the trial court below Exhibit 21 in Special Civil Suit No. 63 of 2018 does not stand. However, in stead of rejecting the plaint under Order VII Rule 11(d) of C.P.C., it would be appropriate on the part of the court to return the plaint to the

respondent/plaintiff for presentation before the proper court. So far as the objection about limitation is concerned, the trial court has rightly observed that the point of limitation is a mixed question of law and facts. In view of the above, I proceed to pass the following order:

ORDER

- I. The Civil Revision Application is hereby partly allowed.
- II. The court below shall return the plaint to the respondent/plaintiff for presenting the same before the proper court.
- III. The Civil Revision Application is accordingly disposed off.

(V. K. JADHAV, J.)

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